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No. 94-909

In The

Supreme Court of the United States

October Term, 1994

HUGO PRINCZ,

Petitioner,

v.

THE FEDERAL REPUBLIC OF GERMANY,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the denial of a foreign government's motion to dismiss for lack of subject-matter jurisdiction is immediately appealable.

2. Whether the atrocities committed by the Nazi regime during World War II waived the sovereign immunity of the Federal Republic of Germany in a suit brought under the FSIA more than fifty years later where the petitioner has refused to accept compensation agreed upon among the Federal Republic, the United States and the other Western Allies, the State of Israel, and the Conference of Jewish Material Claims against Germany.

3. Whether forcing petitioner to work without pay in Poland and Germany between 1942 and 1945 had a "direct" effect in the United States within the meaning of the FSIA's commercial activity exception to foreign sovereign immunity.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES v

COUNTERSTATEMENT OF THE CASE 1

A. The German Compensation System for Survivors of Nazi Persecution 2

B. Proceedings in the District Court 7

C. Proceedings in the Court of Appeals 8

ARGUMENT 9

I. The Court of Appeals' Review of the District Court's Jurisdictional Ruling is Consistent with Decisions of this Court and All Other Circuits 9

II. The Federal Republic of Germany is Not Subject to Suit under the Implied Waiver Exception to Foreign Sovereign Immunity 11

A. The Federal Republic has not Waived its Immunity under the FSIA 11

B. There has been no Waiver under the Principles of Public International Law 12

III. Petitioner's Third Question Presented Requests an Advisory Opinion that this Court May not Give 18

CONCLUSION 19

APPENDIX

Note Verbale No. 42/53, dated July 8, 1993 ..... 1a

Page

United Nations Human Rights Report, dated July 12, 1993 (excerpts) 7a

German Compensation Law ("BEG") §8 (eligibility) and §160 (definition of refugee) (translation) 13a

November 22, 1955, letter from URO to Mr. Princz (translation) 16a

December 8, 1987, letter from the German Consul General to Steven R. Perles, Esq. 17a

Luxembourg Protocols No. 1 and No. 2 (translation) 19a

November 12, 1994, letter from the German Finance Minister to the Secretary of the Treasury of the United States 35a

April 10, 1991, letter from the German Consul General to Mr. Princz (translation) 37a

Exchange of Notes, dated September 28, 1990 ..... 41a

Agreement between the two Germanies implementing the Unification Treaty, Article 2 (translation) 47a

Agreement, dated October 9, 1992, between the German Finance Minister and the Jewish Claims Conference 48a

Note Verbale No. 124/94, dated November 23, 1994, with attachments 54a

Transcripts of December 11, 1992, and April 14, 1993, Hearings 58a

TABLE OF AUTHORITIES

CASES: Page

Argentine Republic v. Amerada Hess, 488 U.S. 428 (1989).....10, 12, 13, 14

Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (1949).....9

Compania Mexicana de Aviacion v. U.S. District Court, 859 F.2d 1354 (9th Cir. 1988) 10

Foremost-McKesson v. Islamic Republic of Iran, 905 F.2d 438 (D.C. Cir. 1990).....10

Gould, Inc. v. Pechiney Ugine Kuhlmann, 853 F.2d 445 (6th Cir. 1988) 10

Marx v. Government of Spain, 867 F.2d 294 (9th Cir. 1989).....10

Princz v. Federal Republic of Germany, 998 F.2d 1 (D.C. Cir. 1993) (*per curiam*) 8, 11

Princz v. Federal Republic of Germany, 26 F.3d 1166 (D.C. Cir. 1994).....8

Republic of Argentina v. Weltover, ____U.S. ____, 112 S.Ct. 2160 (1992).....10

Rush-Presbyterian-St. Luke's Medical Center v. The Hellanic Republic, 877 F.2d 574 (7th Cir. 1989).....10

Saudi Arabia v. Nelson, ____ U.S.____, 113 S.Ct. 1471 (1993).....10

Page

Segni v. Commercial Office of Spain,
816 F.2d 344 (7th Cir. 1987) 10

Siderman de Blake v. Republic of Argentina,
965 F.2d 699 (9th Cir. 1992), *cert. denied*,
113 S.Ct. 1812 (1993) 13, 14

Stena Rederi AB v. Comision de Contratos
del Comite, 923 F.2d 380 (5th Cir. 1991) 10

United States v. Fruehauf, 365 U.S.
146 (1961) 19

Verlinden, B.V. v. Central Bank of
Nigeria, 461 U.S. 480 (1983) 10, 12, 13

Weltover, Inc. v. Republic of Argentina,
941 F.2d 145 (2d Cir. 1991), *aff'd*
____ U.S. ____, 112 S.Ct. 2160 (1992) 10, 19

STATUTES

Foreign Sovereign Immunities Act ..... *passim*

Section 1605-1607 11

Section 1605(a)(1) 8, 9, 11, 13

Section 1605(a)(2) 18

Section 1605(a)(3) 14

RULES

Supreme Court Rules

Rule 15.1 1

Page

MISCELLANEOUS

Bundesentschädigungsgesetz 3, 4

H. Steinberger, *State Immunity* in R. Bernhardt (ed.), *Encyclopedia of Public International Law*, Installment 10 (1987) 15

Hearings on HR 11315 before the Subcomm. on Administrative Law and Governmental Relations of the House Committee on the Judiciary, 94th Cong., 2d Sess. 27 1976) 10, 13

1 *Oppenheim, International Law* 266 (Lauterpacht ed., 8th ed. 1955) 15

1 *Oppenheim, International Law* 341 (Jennings & Watts ed., 9th ed. 1992) 15

The Nurnberg Trial, 6 F.R.D. 69 (1946) 16

UN Report 4

Weber, *The Foreign Sovereign Immunities Act of 1976: Its Origin, Meaning and Effect*, 3 Yale Studies in World Public Order 1 (1976) 13

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BRIEF FOR THE RESPONDENT IN OPPOSITION

The respondent, the Federal Republic of Germany, respectfully requests that the Court deny the petition for a writ of certiorari, seeking review of the judgment entered by the Court of Appeals on July 1, 1994, ordering dismissal of the suit for want of subject matter jurisdiction.

COUNTERSTATEMENT OF THE CASE

In accordance with Rule 15.1 of the Rules of this Court, the Federal Republic of Germany ("Federal Republic" or "Germany") brings to the Court's attention facts supported by the record that are omitted from the petition and that have a bearing on the question of what issues would properly be before the Court if certiorari were granted.

A. The German Compensation System for Survivors of Nazi Persecution

Following the unconditional surrender of the Third Reich, the three Western occupying powers issued guidelines in their respective zones of occupation for compensation of persons who, as a result of their race, religion or political convictions, had been persecuted by the Nazi government. In 1949, laws providing for such compensation were issued by the individual German states (Länder) in the American, British, and French occupation zones and administered under the supervision of the occupying powers.

Immediately upon its establishment in 1949, the Federal Republic considered compensation of the victims of the injustices committed by the Nazi regime as one of its most important and urgent tasks. The legislation enacted thereafter by the Federal Republic went beyond the directives issued earlier by the Allied Powers. It was considered as an independent act of moral responsibility that Chancellor Adenauer described as a "debt of honor" of the German people. (R.Add. 5a).[1] Some four decades later, the Commission on Human Rights of the United Nations, in its Report of July 2, 1993, summarized the claims programs enacted and implemented by the Federal Republic thus:

> 125. It should also be recalled that to this date the most comprehensive system of reparations was introduced by the Federal Republic of Germany for compensating victims of Nazi persecution. As was correctly observed more than 20 years ago in an enlightening overview of this important precedent: ". . .the payments have meant (for numerous victims) the difference between abject poverty and a dignified life with modest security. This does not

[1]The reference "R.Add." is to the documents reproduced in the addendum to this brief.

> mean that complete or even genuine restitution has been made. The persecutions by the Nazi regime were unparalleled and unique in their scope and inhumanity. They cannot be atoned and cannot be forgotten. However, from an historical and legal point of view, the compensation programme and reparations constitute a unique operation." (R.Add. 12a, hereafter "UN Report")

The first uniform federal compensation law (Bundesentschädigungsgesetz, hereafter "BEG") was enacted on October 1, 1953.[2] Under that law, individuals were eligible for compensation, if (a) they resided on January 1, 1947 within the territory covered by the law, (b) resided within the territory of the German Reich on December 31, 1937 and left Germany prior to January 1, 1947 or (c) were refugees within the meaning of the Geneva Convention and resided within the territory covered by the law. §§8 and 160 BEG; R.Add. 13a-15a. The nationality of a claimant was irrelevant to qualify under the program. Compensation consisted of a lump sum payment, depending on length of imprisonment, injuries suffered and loss of livelihood or, at the election of the claimant, a monthly pension.

In 1948, a non-profit legal aid organization, the United Restitution Organization ("URO"), was formed to lobby for reparation legislation in the three Western occupation zones of Germany and Austria. In the following years, the organization assisted victims of the Nazi regime in filing claims for compensation. URO wrote to Mr. Princz on November 22, 1955 that it could not assist him in filing a claim for compensation under the 1953 BEG because he had been an American citizen at the time of persecution and because he could not meet the

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[2]The territory covered by the law was the territory of the Federal Republic of Germany before reunification.

residency requirements noted above. (R.Add. 16a). Mr. Princz was indeed ineligible under the 1953 federal law because of his inability to meet the law's residency or refugee status requirements; however, he was not ineligible because he was an American citizen. (R.Add. 17a; cf. Pet. at 6).

Eligibility under the original BEG was based on the principle of territoriality, not nationality. (UN Report at § 108; R.Add. 9a). As a result, numerous victims of Nazi persecution were unable to meet the requirements of the BEG. To render these claimants eligible for compensation, numerous states (Luxembourg, Norway, Denmark, Greece, Netherlands, France, Belgium, Italy, Switzerland, Austria, United Kingdom, Sweden) concluded with the Federal Republic of Germany in the years 1959-1961 "global agreements" under which these states received lump sum payments for distribution to individual claimants. (UN report at § 110; R.Add. 10a). The United States did not seek such a "global agreement" with the Federal Republic.

Earlier, in 1951, the Federal Republic of Germany had begun negotiations with the state of Israel and the Conference on Jewish Material Claims against Germany ("Claims Conference") to assure a fair and acceptable compensation system for Jewish victims of the Nazi regime. The Claims Conference represents 24 Jewish organizations worldwide.[3] These negotia-

[3]Agudath Israel World Organizaton; *Alliance Israelite Universelle;* American Jewish Committee; American Jewish Congress; American Jewish Joint Distribution Committee; American Zionist Council; Anglo-Jewish Association; B'nai B'rith; Board of Deputies of British Jews; British Section, World Jewish Congress; Canadian Jewish Congress; Central British Fund; *Conseil Representatif des Juifs de France;* Council for the Protection of the Rights and Interests of Jews from Germany; *Delegacion de Associaciones; Israelitas Argentinas (D.A.I.A.)*; Executive Council of Australian Jewry; Jewish Abency for Palestine; Jewish Labor Committee; Jewish War Veterans of the U.S.A.; South African Jewish Board of Deputies; Synagogue Council of America; World Jewish Congress; *Zentralrat der Juden in Deutschland.*

ions culminated in a treaty with the State of Israel and the so-called Luxembourg Protocols 1 and 2. These accords resulted in payments of $1.8 billion to Israel and $300 million to the Claims Conference. (R.Add. 19a-34a).

Subsequent to the entry into force of the Protocols and further negotiations with the Claims Conference, the German compensation program was amended in 1965, 1980 and in 1992 to cover additional survivors who had received no compensation. As of 1994, Germany had paid over $74.3 billion to some 2 million claimants. An additional $10 to 12 billion will be disbursed in pension payments in the future. Some 40,000 of these recipients live in the United States. (R.Add. 37a-38a).

As noted, petitioner was ineligible for compensation under the original 1953 federal law because of his inability to meet either the residency or refugee status requirements, but he became fully eligible to file a claim for compensation under the 1965 amendment to the law. The deadline for filing claims expired on December 31, 1969. Petitioner did not apply for compensation under the 1965 amendment until some two decades later (on March 11, 1991); the German Consulate General in New York advised Mr. Princz by letter of April 10, 1991 that his request had to be denied because the time for filing it had long ago expired. (R.Add. 39a).

At present, the petitioner is once again eligible to receive compensation. Pursuant to article two of the agreement implementing the unification of Germany, the two Germanies agreed to establish a fund to provide for compensation of victims of Nazi persecution "who so far had received no compensation or only minimal compensation." (R.Add. 47a). In implementation thereof, an agreement was entered into with the Claims Conference on October 9, 1992 for the payment of

$690 million in compensation. (R.Add. 48a).[4]

The agreement negotiated with the Claims Conference provides for a one time bridge payment, with monthly payments to begin on August 1, 1995. Petitioner is eligible to receive a lump sum payment of DM 5,000 (approx. $3,400), and thereafter a monthly pension of DM 500 (about $340). The Claims Conference receives each month between 500 and 800 new applications from U.S. residents. To date, some 70,000 persons have applied for Article Two funds, 19,000 of whom are U.S. residents. 4,000 claimants living in the United States have so far received determinations that they qualify for pensions. (R.Add. 54a-56a).

In the view of the Federal Republic, petitioner should file for compensation from Article 2 funds as have 70,000 others. (R. Add. 54a-57a). Petitioner, however, has not filed for compensation under this latest compensation program, and his counsel has advised the German authorities that he does not intend to do so. Instead, on March 12, 1992, he commenced the instant action in the district court under the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602 *et seq.* ("FSIA"), seeking a judgment for $17 million.

Petitioner refers repeatedly to unsuccessful attempts at the

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[4]In an exchange of notes, the United States, the Federal Republic, the United Kingdom, and the Republic of France, agreed on the continuation of the German compensation program as it had existed while Germany was divided. 30 I.L.M. 454 (1991); (R. Add. 41a-46a). Article 4c of the notes provides for "the application of the correspondent provisions of the Federal Restitution Law and Federal Compensation Law" in the former East German territory. (R.Add. 44a). The Luxembourg Protocol No. 2, para 8, provides that annuities shall not exceed 500 DMark per month. (R.Add. 21a).

diplomatic level to settle this case. Pet. at 7, 20-23.[5] Germany stated in the course of these discussions that it was bound by the laws, treaties, and agreements covering compensation of survivors of Nazi persecution and could not pay Mr. Princz millions of dollars in compensation when others had received such smaller amounts as agreed upon with the United States, the other Western powers, the State of Israel, and the Claims Commission. If Germany were to pay what Mr. Princz demands to all persons similarly situated it would exceed the financial capacity of the Federal Republic.

B. Proceedings in the District Court

Petitioner's complaint asserted that he was forced to work between 1942 and 1945 at Auschwitz and Dachau in factories owned by German corporations such as I.G. Farben and Messerschmidt that produced war material. The corporations paid the Nazi Government for petitioner's labor, but petitioner received no recompense. Petitioner's complaint further asserted that the Federal Republic was not immune from suit under the FSIA because (1) it had impliedly waived its immunity from suit, and (2) because the action was based upon a commercial activity that caused a direct effect in the United States. The Federal Republic moved to dismiss for lack of subject-matter jurisdiction under the FSIA. At the oral argument on the motion in December 1992, the district court stated that the FSIA had no role to play in this suit and ruled that petitioner's suit was properly brought in his court because he was an American citizen. (R.Add. 59a). The court denied the

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[5]Petitioner's representation (Pet. at 7) that Germany has steadfastly denied Princz compensation is incorrect. As shown earlier, he was eligible under a law passed in 1965 and is now eligible under a law passed in 1992.

Federal Republic's motion from the bench, and scheduled the case for trial in May 1993. On numerous occasions during the course of oral argument the district court stated that the Federal Republic was not entitled to the protection of U.S. law because of the lawless acts of the Nazi regime. (R. Add. 58a-63a).

The Federal Republic appealed from the oral denial of its motion to dismiss. Two days after the appeal was noticed, the district court filed a memorandum opinion and order ruling that Princz had a Constitutional right to proceed against the Federal Republic in a United States Court. Pet. App. 59a. The Federal Republic noticed a second appeal.

C. Proceedings in the Court of Appeals

On April 14, 1994, the court of appeals issued an order directing the district court not to proceed to trial until the appeal was resolved. *Princz v. Federal Republic of Germany*, 998 F.2d 1, 2 (D.C. Cir. 1994) (*per curiam*) (Pet. App. 44a). The court of appeals also denied Princz's motion to dismiss the appeal or for summary affirmance. (*Ibid.*).

Thereafter, on July 1, 1994, a divided panel of the court of appeals reversed the district court's jurisdictional ruling and dismissed the case for lack of subject-matter jurisdiction under the FSIA. *Princz v. Federal Republic of Germany*, 26 F.3d 1166 (D.C.Cir. 1994)(Pet. App. 3a). With two exceptions,[6] the petition accurately summarizes the main points of the majority opinion. Pet. at 9-11. The dissenting judge would have interpreted the implicit waiver provision of the FSIA, §1605(a)(1), to vest

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[6]First, Germany did not ask the United States to file an *amicus* brief in support of its jurisdictional defense. Second, the majority below did not "appear to concede" that the enslavement of petitioner was a commercial act. The court assumed it was commercial *arguendo* Pet.App. 14a; cf. Pet. at 8-9.

subject-matter jurisdiction against the Federal Republic. In the dissenter's view, such an interpretation would accord with international law and the emerging doctrine that a foreign state which violates *jus cogens* forfeits all claims to immunity from suit. Pet. App. 31a-42a. The panel's majority disputed this rationale, stating:

> We think that something more nearly express is wanted before we impute to the Congress an intention that the federal courts assume jurisdiction over the countless human rights cases that might well be brought by the victims of all the ruthless military juntas, presidents-for-life, and murderous dictators of the world, from Idi Amin to Mao Zedong. Such an expansive reading of §1605(a)(1) would likely place an enormous strain not only upon our courts but, more to the immediate point, upon our country's diplomatic relations with any number of foreign nations. In many if not most cases the outlaw regime would no longer even be in power and our Government could have normal relations with governments of the day — unless disrupted by our courts, that is. Pet. App. 20a, n. 1.

ARGUMENT

I. The Court of Appeals' Review of the District Court's Jurisdictional Ruling is Consistent with Decisions of this Court and All Other Circuits.

The court of appeals decision to hear the Federal Republic's appeal does not conflict with the decision of any other court of appeals that has heard appeals by foreign states under the collateral order doctrine, *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949). From the inception of the FSIA,

all Circuits that have addressed the question have ruled unanimously that a denial of sovereign immunity is immediately appealable.[7]

The only FSIA case that reached this Court in which a foreign state appealed a district court's denial of immunity was *Republic of Argentina v. Weltover*, ____ U.S. ____, 112 S.Ct. 2160 (1992).[8] No issue was raised in this Court or in the court of appeals as to the appealability of the district court's order denying Argentina's motion to dismiss for lack of subject-matter jurisdiction.

It is also worthy of note that in the Congressional hearings on the bill that became the FSIA, the Department of State took the position that "the purpose of sovereign immunity in modern international law is to promote the functioning of all governments by protecting a state from the burdens of defending law suits abroad which are based upon its public acts." *Hearings on H.R. 11315 before the Subcomm. on Administrative Law and Governmental Relations of the House Committee on the Judiciary*, 94th Cong., 2d Sess. 27 (1976) (hereafter "hearings on H.R. 11315") (testimony of Monroe Leigh, Legal Adviser, Department of State). The Executive Branch continues

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[7] *Foremost-McKesson v. Islamic Republic of Iran*, 905 F.2d 438, 443 (D.C. Cir. 1990); *Weltover, Inc. v. Republic of Argentina*, 941 F.2d 145 (2d Cir. 1991), *aff'd*, ____ U.S. ____, 112 S.Ct. 2160 (1992); *Stena Rederi AB v. Comision de Contratos del Comite*, 923 F.2d 380 (5th Cir. 1991); *Gould, Inc. v. Pechiney Ugine Kuhlman*, 853 F.2d 445, 450 (6th Cir. 1988); *Rush-Presbyterian-St. Luke's Medical Center v. The Hellenic Republic*, 877 F.2d 574, 576, n.2 (7th Cir. 1989); *Segni v. Commercial Office of Spain*, 816 F.2d 344, 347 (7th Cir. 1987); *Marx v. Government of Guam*, 866 F.2d 294, 296, n. 2 (9th Cir. 1989); *Compania Mexicana de Aviacion v. U.S. District Court*, 859 F.2d 1354, 1358 (9th Cir. 1988).

[8] In the three other FSIA cases to reach this Court, it was the private party that appealed the dismissal of the suit on sovereign immunity grounds. See *Saudi Arabia v. Nelson*, ____ U.S. ____, 113 S.Ct. 1471 (1993); *Argentine Republic v. Amerada Hess*, 488 U.S. 428 (1989); and *Verlinden, B.V. v. Central Bank of Nigeria*, 461 U.S. 480 (1983).

to maintain this position on collateral appeals in FSIA cases, as was recently manifested by the Government's motion to publish the stay order in this case (Pet.App. 64a), which explained the appealability of rulings by district courts denying sovereign immunity from suit to foreign states. The court of appeals' order was subsequently published in *Princz v. Federal Republic of Germany*, 998 F.2d 1 (1993).

Thus, petitioner's first question presents no issue for review by the Court.

II. The Federal Republic of Germany is Not Subject to Suit under the Implied Waiver Exception to Foreign Sovereign Immunity.

A. The Federal Republic has not waived its immunity under the FSIA.

Petitioner acknowledges, as he must, that none of the express exceptions to foreign sovereign immunity codified in §§ 1605-1607 of the FSIA applies to his claim for compensation for violations of human rights that he suffered at the hands of the Nazi regime half a century ago. The majority's jurisdictional ruling finds ample support in the statute and in its legislative history, and is fully consistent with this Court's repeated interpretations of the statute. In contrast, petitioner urges the Court to embrace the theory that "under limited circumstances" the conduct of a foreign state may be so offensive that it gives rise to an implied waiver of sovereign immunity. (Pet. at 25). Such an exception, petitioner says, should be carved out under §1605(a)(1) only for cases where the victim is a United States national. (*Ibid.*). Petitioner adduces no support for his theory from the language of the statute or its legislative history. He also fails to confront the two decisions of this Court that forbid drawing distinctions between citizens

and aliens when determining jurisdiction under the FSIA. *Weltover, supra*, 119 L.Ed. 2d at 408; *Verlinden, supra*, at 589. In exercising such an unprecedented extension of their jurisdiction, United States courts should not, according to petitioner, be concerned with the absence of any other affiliating contacts, with the passage of time, the disappearance of the regime that inflicted the harm, or any other developments on the international scene since the claimant suffered harm. (Pet. *passim*).[9]

Petitioner criticizes the majority of the court of appeals for its claimed "failure to examine and apply the nature of 'comity' to the foreign sovereign immunity determination." (Pet. at 22). He maintains that a state's *jus cogens* violations "are so offensive to the bilateral comity between the nations involved that they give rise *per se* to an implied waiver of the immunity by the offending sovereign." (*Ibid.*) The argument plainly confuses the concept of comity as used in the private international law — the voluntary recognition given by the courts to another state's legislative, executive, or judicial acts — with the international law doctrine of immunity as explicitly codified in the FSIA. It is the explicit provisions of the FSIA that govern here, not the amorphous doctrine of comity. *Amerada Hess, supra*, 488 U.S. at 435-36.

It is remarkable that throughout the FSIA's eight-year gestation period, during which time the proposed legislation underwent innumerable changes as a result of inter-Departmental meetings, discussions with bar associations and learned

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[9]Petitioner also brings to the Court's attention attempts by the Department of State to persuade the Federal Republic to "settle" this case. Pet. at 7, 20-23. The FSIA, however, was passed to rest the decsion on foreign sovereign immunity squarely in the courts, which are presumed to be impervious to extra-legal considerations. *Verlinden, supra*, at 486-87.

societies, consultations with the Secretary of State's Advisory Committee on International Law, and two extensive hearings before a sub-committee of the House of Representatives,[10] not a single person adumbrated the possibility that the bill could serve a jurisdictional predicate for actions against foreign states for *jus cogens* violations committed anywhere in the world. To the contrary, "Congress was aware of concern that our courts [might be] turned into small international courts of claims, open to all comers to litigate any dispute which any party may have with a foreign state anywhere in the world." *Verlinden, supra*, 480 U.S. at 490, testimony of Bruno A. Ristau, the Justice Department representative on H.R. 11315 (Hearings on H.R. 11315, at 31); ellipses and internal quotations omitted).

Furthermore, in the 17 years since the inception of the FSIA, not a single unreversed decision has based subject-matter jurisdiction on the theory that a *jus cogens* violation impliedly waived immunity under §1605(a)(1) of the Act. *See also, Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 719 (9th Cir. 1992) (*Amerada Hess* Court foreclosed jus cogens violations as jurisdictional predicate for suits against foreign sovereigns), *cert. denied*, 113 S.Ct. 1812 (1993).

Consistent with the text and legislative history of the FSIA, this Court made it explicit in *Argentine Republic v. Amerada Hess, supra*, that —

> Congress had violations of international law by foreign states in mind when it enacted the FSIA. For example, the FSIA specifically denies foreign states immunity in suits 'in which rights in property taken in

[10]See, *e.g.* Weber, The Foreign Sovereign Immunities Act of 1976: Its Origin, Meaning and Effect, 3 Yale Studies in World Public Order 1 (1976).

> violation of international law are in issue.' 28 U.S.C. §1605(a)(3). Congress also rested the FSIA in part on its power under Art. I, §8, cl. 10, of the Constitution '[t]o define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations.' See H.R. Rep., at 12; S. Rep., at 12. From Congress' decision to deny immunity to foreign states in the class of cases just mentioned, we draw the plain implication that ***immunity is granted in those cases involving alleged violations of international law that do not come within one of the FSIA's exceptions.***

488 U.S. at 435-36; emphasis added. In context it is clear that the italicized phrase means that immunity is granted in all instances involving alleged violations of international law that are not specifically listed in the Act as instances in which immunity is denied. Otherwise, the violations of international law alleged in *Amerada Hess* could have been sufficient to waive immunity.[11] That is how the phrase was interpreted by the Ninth Circuit in *Siderman, supra*, at 719, and petitioner has cited no decision that interprets the phrase differently.

Based on the foregoing analysis, it is patent that the court of appeals correctly rejected petitioner's argument that tortious conduct of a foreign state abroad which violates *jus cogens norms* of international law is justiciable under the implied waiver provision of the FSIA.

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[11]In *Amerada Hess*, as here, the respondent urged that Argentina's violation of international law had amounted to a blatant violation of international human rights law. Brief for Respondent in No. 87-1372 at 35-36.

B. There has been no waiver under the principles of public international law.

Even if the FSIA left any room for interpretation in this case - which it does not—an exception to the rule of foreign sovereign immunity could not possibly be derived from the principles of public international law. While it is true that Congress directed that the FSIA should be interpreted in accordance with established principles of international law, the conclusions that petitioner has drawn from this position do not bear scrutiny.

Petitioner's arguments misapprehend the underpinnings of the doctrine of sovereign immunity in the contemporary practice of states. While in the past courts and writers have on occasion referred to the "comity of rations" as the basis for granting immunity from suit to foreign states — see, 1 *Oppenheim, International Law* 266-67 (Lauterpacht ed., 8th ed. 1955) — the principle of immunity of sovereign states from the jurisdiction of the courts of other states is now regarded as a positive rule of international law. 1 *Oppenheim's International Law* 341 ff., (Jennings & Watts ed., 9th ed. 1992; H. Steinberger, *State Immunity*, in R. Bernhardt (ed.), *Encyclopedia of Public International Law*, Installment 10 (1987) at 432:

> The obligation to grant immunity to foreign States in respect of their conduct or property *jure imperii* today forms part of positive international law, not merely comity, regardless of whether under municipal law immunity is treated as a political question or as a question of law on which the courts may rule.

Petitioner, by various references to the dissenting opinion of the court of appeals (Pet. at 21, 23), also seems to embrace

the dissent's assessment of the Nuremberg trial's legal implications. Again only the starting point of the argument is valid. It is correct that the Nuremberg trials have started an evolution of international law that has resulted in definite restrictions on claims to immunity. But Nuremberg, as well as the emerging principle of universal criminal jurisdiction for certain offenses committed by individuals, have only removed the immunity of individual offenders, not of foreign states as such.[12] The dissenting judge's analogy between the Nazi war criminals' legal position before the international forum in Nuremberg and the Federal Republic's standing under international law in a municipal court is false.

Furthermore, petitioner seems to miss one essential aspect of sovereign immunity under international law. Immunity from the jurisdiction of foreign municipal courts does not imply immunity from international responsibility. The Federal Republic has never sought to disavow international responsibility for the Holocaust. As set out in the counterstatement *supra*, over the course of more than forty years, in cooperation with Israel, the United States and the Claims Conference, Germany has devised an elaborate system of compensation—trying to make restitution for the wrongs that cannot be undone.

Petitioner has chosen to dismiss the legal connection between Germany's claim to sovereign immunity in the district

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[12]It is worthy of note that the German state itself was not indicted at Nuremberg. Rather, in addition to individuals, six organizations were indicted in the Tribunal: the leadership corps of the Nazi party, the Gestapo and SD, the SS, the SA, the Reich Cabinet, and the German General Staff/High Command. Of these, the four organizations that were creatures of the Nazi party were convicted and the two that were conventional organs of the German state, that is, the General Staff/High Command and the Reich Cabinet, were acquitted. *The Nurnberg Trial*, 6 F.R.D. 69, 131-145 (1946).

court and the established system of world-wide compensation, thus indicating a misunderstanding of the function of sovereign immunity in international law. The singular historic catastrophe of the Holocaust could not conceivably be remedied by countless individual suits under different standards before a multitude of national courts in various countries. Remedial action could only be organized on the international level. This has been done. If, however, national courts now were to begin piercing through the established system of compensation, decades of international efforts would be invalidated. Sovereign immunity thus could not serve any more the vital function it has in the perennial struggle for an orderly conduct of international relations.

Finally, petitioner has wholly failed to take into account the legal fact that the United States Government has not only approved the established system of compensation created by Germany, but has requested its continued application. The United States government has thereby implicitly confirmed Germany's claim of foreign sovereign immunity before U.S. courts with regard to individual suits which clearly run counter to this system. As recently as 1990, the United States, together with the United Kingdom and France, insisted on obtaining in an agreement, binding the United States as well as Germany, the following legal commitment:

> The Government of the Federal Republic of Germany confirms that the deletion of Chapters Three, Four and Five [of the Convention on Relations between the Three Powers and the Federal Republic of Germany of 26 May 1952] ***shall not affect the continued application of the principles set forth therein*** in respect of internal restitution, compensation for victims of Nazi persecution and external restitution, ***as well as the continued application of the corresponding***

> *provisions of the Federal Restitution Law and the Federal Compensation Law.*[13] [R.Add.44a; emphasis added.]

Against this background, the denial of Germany's claim of sovereign immunity in this case would amount to a *venire contra factum proprium, i.e.*, the disregard of a well-established principle under international law.

Petitioner's second question, therefore, presents no issue for review by this Court.[14]

III. Petitioner's Third Question Presented Requests an Advisory Opinion that this Court May not Give.

Petitioner finally asks this Court to review the court of appeals' holding that petitioner's forced labor in Poland and Germany half a century ago did not constitute a commercial activity that had a direct effect in the United States. Petitioner urges that the court of appeals thereby decided "a federal question in contravention of an Act of Congress." (Pet. at 26).

Petitioner acknowledges, as he must, that in *Weltover, supra*, this Court determined that the terms "direct effect" as used in Section 1605(a)(2) of the FSIA, means an effect which follows as "an immediate consequence of defendant's activity" rather than one that is "substantial and foreseeable." Pet. at 27-28. He concedes that most courts, including the court below, have interpreted this Court's "immediate consequence" language to mean "one which has no intervening

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[13]See footnote 4.

[14]Petitioner does not contend in this Court, as he did below, that his claim is cognizable under pre-FSIA law of sovereign immunity — a contention that the court of appeals rejected. (Pet. App. 22a-23a)

element, but rather flows in a straight line without deviation or interruption." *Weltover*, 112 S.Ct. at 2168. (Pet. at 27). Petitioner further asserts that this construction provides scant guidance to the courts, although he provides no authorities or a plausible explanation for that assertion. Instead, he suggests that the term "direct effect" has been interpreted by this Court in other statutes in a manner that differs from the meaning given that term by the court below. (Pet. at 28).

Petitioner does not claim that the court of appeals has misinterpreted or misapplied this Court's instructions in *Weltover*, nor does he explain how — on the facts of this case — there could have been a direct effect in the United States in light of the *Weltover* Court's clear analysis.

Article III of the Constitution limits this Court to deciding "cases or controversies," and the Court has long ago established that it does not render mere advisory opinions. *United States v. Fruehauf*, 365 U.S. 146 (1961) (Court declined to give advisory opinion on issues which remain unfocused because not pressed with that clear concreteness provided when question emerges precisely framed and necessary for decision from clash of adversary argument exploring every aspect of multi-faceted situation). Thus, petitioner's third question also presents no issue for review by this Court.

CONCLUSION

The Federal Republic does not deny the Holocaust, nor does it consider that money can ever adequately compensate the victims of the Nazi regime. On the other hand, it should not be necessary to stress that the Federal Republic is not the Nazi regime, and that since its establishment it has undertaken a program for compensation of victims of the Nazi regime that is unprecedented. Like any other country, the Federal Republic has to allocate financial resources among competing needs. It

cannot single out Mr. Princz for treatment different from that afforded to individuals who are similarly situated and maintain the integrity of its compensation and restitution program. In any event, a United States court is not competent to review the administration of a compensation program of a foreign state.

For the foregoing reasons, the court of appeals was right in holding that the district court lacked subject matter jurisdiction to hear petitioner's claim under the FSIA, and the petition for a writ of certiorari should be denied.

Respectfully submitted,

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December 19, 1994

Botschaft der Bundesrepublik Deutschland
Embassy of the Federal Republic of Germany

RK 552 SE Princz

Note Verbale No. 42/93

The Embassy of the Federal Republic of Germany presents its compliments to the Department of State and has the honor of bringing to the Department's cognizance the following additional information with respect to the lawsuit of *Princz v. Federal Republic of Germany* which was the subject of the Embassy's Note Verbale No. 22/93 of March 11, 1993.

The office of the Legal Advisor of the Department of State has advised counsel for the Federal Republic of Germany that the United States does not intend to file a Statement of Interest in that litigation.

The denial of sovereign immunity to the Federal Republic of Germany by the U.S. District Court for the District of Columbia in this case is presently under review in the U.S. Court of Appeals for the District of Columbia Circuit. The Embassy is aware that in the past the United States repeatedly expressed its views on foreign sovereign immunity in litigation involving The Peoples Republic of China (1985), Mexico (1987), South Africa (1988), the Soviet Union (1989), Argentina (1989), Iran (1990) and Saudi Arabia (1993).

Since the issue of the fairness and adequacy of the German Laws compensating victims of Nazi persecution has been interjected into these proceedings, the Embassy submits the following history of the German Restitution and Compensation Laws in further clarification of its Note of March 11, 1993.

In the London Proclamation of January 5, 1943, the Allied Powers declared all property transactions in the territory under German control to be null and void. The Protocol of Potsdam of August 2, 1945, provided that "Germany be obliged to make compensation for the damage it caused in kind to the greatest extent possible." From its inception, the issue of reparation, restitution and compensation as a result of World War II was considered an "international question" and not a domestic German question.

The Allied Control Council assumed the functions of the German government after the surrender of the Third Reich. Control Council Proclamation No. 2 announced that the Allies would "protect the rights and interests of those who had suffered under the Nazi injustice."

In March 1949, the U. S. Military Government (OMGUS) issued to the German Council of States (Länderrat), initial guidelines for the promulgation of restitution laws. The individual German States exercised in the early post War years limited authority under the supervision of the occupation authorities. These regional laws provided for the return of property confiscated by the Nazis, so-called "Restitution" (Rückerstattung). Separate "Compensation Laws" (Entschädigungs-Gesetze) were passed to pay for individual damages such as imprisonment in concentration camps, personal injury, wrongful death, impairment of health and loss of future earning capacity. To be eligible, a claimant had to be a resident of the respective State as of January 1, 1947. Refugees as defined by the Geneva Convention were covered by these laws as well as individuals who resided within the boundaries of the German Reich as of December 31, 1937. OMGUS deemed it necessary to impose limitations on eligibility. The early laws became effective on April 1, 1949, for the U.S. occupation zone. Similar laws were issued in the British and French zones. None was enacted in the Soviet zone.

As result of the different laws passed in the three occupation zones for the restitution or property and for compensation of Nazi injustice it became necessary to enact a uniform law for the territory or the Federal Republic. On May 23, 1949 the Federal Republic of Germany regained the power to enact its own laws when it adopted a new Constitution (Grundgesetz). Subsequently, beginning in 1949, the Federal Republic entered into negotiations with the State of Israel and with the Conference on Jewish Material Claims against Germany (Jewish Claims Conference) concerning unresolved issues of compensation for Nazi crimes.

These negotiations culminated in the Treaty with Israel of September 10, 1952, and the so-called Hague Protocols No. 1. and No. 2 which resulted in the payment or three billion Deutschmarks ($ 1,8 billion) to Israel and 450 million Deutschmarks ($ 300 million) to the Jewish Claims Conference. The Federal Republic of Germany and the Jewish Claims Conference dealt as equal partners in these negotiations and continued to do so on subsequent matters.

The first uniform Compensation Law was thereafter enacted on October 1, 1953. It was amended three years later on June 24, 1956, to cover victims who had not been eligible under the residence requirements of the earlier laws. Some 30 organizations representing victims of Nazi crimes testified on June 25, 1963, at a hearing at the German Treasury Department. On September 14, 1965, the Federal Republic of Germany enacted its Final Compensation Law (BEG SchluBgesetz). It further extended the coverage to victims who were not eligible under the earlier residence requirements and dealt with other unresolved issues of compensation for Nazi crimes.

The deadline for filing claims under the 1965 law was repeatedly extended after demands were made by Jewish

organizations that individuals outside Germany had not been adequately informed about the provisions of the law. The last and final extension for filing claims was December 31, 1969.

This final deadline was challenged as being unconstitutional. Germany's highest Court upheld the deadline and held that there must come a time when the extent of the German government's responsibility to pay compensation can be finally determined in order to appropriate the necessary funds. By this time more than 25 years had passed since the crimes of the Nazis were committed and it was becoming ever more difficult to establish the evidence necessary to support claims.

Claims were filed with German administrative agencies. Their decisions were subject to challenge in the regular courts: District Court (Landgericht), Court of Appeals (Oberlandesgericht) and Civil Supreme Court (Bundesgerichtshof). In addition the Allied Powers established a Supreme Restitution Court to settle disputes concerning matters of restitution. That Court consisted of two German judges and two judges of each of the Allied powers and continued to be active until the 1980s. In accordance with a decision by the German Civil Supreme Court (BGH) of July 11, 1968, the definition of refugees was further clarified, so as to include claimants who could not return to their home countries because of fear of persecution for racial or political reasons such as in Communist countries. In accordance with the earlier laws originating with U.S. authorities and the negotiations with the Jewish Claims Conference the final compensation law provided that claims would not survive the claimants. Beneficiaries of a descendent's estate would therefore not inherit any interest in the descendent's claim.

Since its inception, the Federal Republic of Germany considered the compensation of the victims of the injustice committed by the Nazi government as one of its most important

and urgent tasks. The legislation enacted by the Federal Republic of Germany went beyond the demands established by the victorious Allies and was considered an independent German act of moral responsibility. Chancellor Adenauer spoke of a "debt of honor" of the German people. The law followed the principles expressed in the early laws enacted in the American Zone of occupation.

In addition to the compensation of individual victims who received a total of over 55 billion dollars (85 billions Deutschmarks), the Federal Republic agreed to pay additional billions to foreign governments. The state of Israel received 3.45 billion DM of which 450 million DM was allocated to the Conference on Jewish Material Claims against Germany. During the period of 1959 to 1964 the Federal Republic entered into agreements with 12 Western European countries to pay compensation to Nazi victims who were not covered by the compensation Law of June 29, 1956, because they did not reside within the boundaries of the German Reich as of December 31, 1937. the Federal Republic paid a total of approximately one billion Marks to the following countries: Luxembourg (18 million), Norway (60 million), Denmark (16 million), Greece (115 million) , the Netherlands (125 million), France (400 million), Belgium (80 million), Italy (40 million), Switzerland (10 million) Austria (95 million), Great Britain (11 million) and Sweden (1 million). The equitable distribution of the funds was left to the discretion of the individual countries.

Most recently, the treaties for the unification of Germany included agreements for the compensation of victims who under the prior laws had not received any or not sufficient compensation for their sufferings. On October 28, 1992, the Federal Republic entered into an agreement with the Jewish Claims Conference providing for a fund of over 600 million dollars (975 million DM) to be administered by the Claims

Conference. On October 16, 1991, an agreement was reached with Poland providing for 300 million dollars (500 million DM) for the "Foundation of German-Polish Reconciliation." on April 16, 1992, notes were exchanged with Belarus, the Russian Federation and the Ukraine in which the Federal Republic agreed to provide a total of 600 million dollars (1 billion DM) for "Foundations of Understanding and Reconciliation."

The Embassy of the Federal Republic of Germany avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

Washington, D.C. July, 1993
Ha/Bra

Department of State

Washington, D.C.

United Nations Economic and Social Council

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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-fifth session
Item 4 of the provisional agenda

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms

Final report submitted by
Mr. Theo van Boven, Special Rapporteur

CONTENTS

	Paragraphs	Page
Prologue		
Introduction	1 — 5	4
I. PURPOSE AND SCOPE OF THE STUDY; SPECIAL ISSUES OF INTEREST AND ATTENTION...	6 — 25	6

II. RELEVANT EXISTING INTERNATIONAL NORMS 26 — 39 13

A. International human rights norms (global and regional human rights instruments).... 26 — 32 13

B. Norms in the area of crime prevention and criminal justice ..... 33 — 34 14

C. International humanitarian law norms ..... 35 — 39 14

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VI. NATIONAL LAW AND PRACTICE

106. It has not been possible to collect elaborate information on national law and practice relating to the right to reparation for victims of gross violations of human rights and fundamental freedoms. A request to Governments to supply relevant information provoked only scarce reactions. Consequently, the Special Rapporteur had to rely mainly on information received from other sources[74] and pertaining to a limited number of countries. This section on national law and practice is included for illustrative purposes in order to show how some countries which went through a period of gross violations of human rights have been trying to repair the wrongs of the past and to set norms for the future. While the information reviewed in this section is not complete enough for drawing general conclusions, it does allow the making of certain observations by way of illustration.

107. The most comprehensive and systematic precedent of reparation by a Government to groups of victims for the

redress of wrongs suffered is provided by the Federal Republic of Germany to the victims of Nazi persecution. The early laws enacted in Germany after the Second World War dealt only with restitution of, or compensation for, identifiable property.[75] More far-reaching were the successive Compensation Laws and Agreements, enacted and concluded from the year 1948 and onwards till the enactment in 1965 of the Final Federal Compensation Law (Bundesentschädigungsschlussgesetz, to be referred to as BEG).

108. Under the BEG, a victim of the Nazi persecution is defined as someone who was oppressed because of political opposition to National Socialism, or because of race, religion or ideology, and who suffered in consequence loss of life, damage to limb or health, loss of liberty, property or possessions, or harm to professional or economic prospects.[76] An important aspect of the criteria for eligibility under the BEG is the law's principle of territoriality. A claim for compensation is tied to the claimant's residence in Germany but the law does not only cover residents of the Federal Republic of Germany and former residents of the former territory of Germany as in 1937, but also various categories of refugees, emigrants, deported or expelled people if they had for some time domicile or place of permanent sojourn in Germany.[77]

109. As regards various categories of damage covered by the BEG, the following may be noted:

a) *Loss of life* included, according to the interpretation of the courts, homicide, manslaughter and death as a result of damage to health inflicted on the victim, notably also in concentration camps. Loss of life also included death caused by a deterioration in health resulting from emigration or from living conditions detrimental to health. In addition, compensation has been paid in cases of suicide prompted by persecution, includ-

ing suicide caused by economic difficulties which the victim could not overcome in the country to which he emigrated;[78]

b) *Damage to limb or health* gave rise to compensation if the damage was more than insignificant which means that it entailed or was likely to entail lasting impairment of the victim's mental or physical faculties;[79]

c) Damage to liberty included deprivation of liberty and restrictions of liberty. Under deprivation of liberty falls police or military detention, arrest by the national Socialist Party, custodial or penal imprisonment, detention in a concentration camp and forced stay in a ghetto. The victim is also regarded as having been deprived of liberty if he lived or did forced labour under conditions resembling detention. Restrictions of liberty giving a claim to compensation included compulsion to wear the Star of David and to live "underground" under conditions unfit for a human being;[80]

d) *Damage to professional and economic prospects* led to compensation if the victim had lost use of his earning power.[81]

110. Many victims of Nazi persecution did not suit the requirements of the BEG. Among these victims were Belgian, Danish, Dutch and French nationals who were persecuted and damaged in their own countries. To meet these claims, a number of countries (Luxembourg, Norway, Denmark, Greece, Netherlands, France, Belgium, Italy, Switzerland, Austria, United Kingdom, Sweden) concluded with the Federal Republic of Germany in the years 1959-1961 with the Federal Republic of Germany "global agreements" under which they received funds for payment to individual claimants.[82] Earlier, in 1952, the Federal Republic of Germany and Israel had concluded an agreement under which the Federal Republic undertook to pay Israel compensation to assist in the integration

of uprooted and destitute refugees from Germany and to pay restitution and indemnification for claims of individuals, Jewish organizations and for the rehabilitation of Jewish victims of the Nazi persecution.[83]

111. While the overall assessment of the BEG is positive (see *infra*, para. 125), the law did have its inadequacies and decisions based on the law showed shortcomings. For instance, many observers maintained that damage to property and possessions received too favourable consideration in comparison with the less generous treatment of damage to life and health. Similarly, the principle of territoriality worked to the disadvantage of victims who were not residents of Germany or who were stateless persons or refugees. On the other hand, one group of victims had been clearly favoured. They were former members of the German civil service or the German Government, including judges, professors and teachers, who were reinstated in the position, salary or pension group which the claimant would have reached had the persecution not taken place.[84] It is against this background that in a set of principles and guidelines for national compensation policies, formulated on the basis of the experience gained by the German *Wiedergutmachung*, the first two principles and guidelines read as follows:

(i) The principle of equality of rights of all victims is of primary importance. This does not mean that they should all receive the same amount of relief, but it does mean that they should enjoy the same rights within the scope of the claims laid down by the law;

(ii) It is necessary to have central planning, legislative, and administrative machinery, since only the principle of centrality can ensure the principle of equality of rights.[85]

* * * * *

125. It should also be recalled that to this date the most comprehensive system of reparation was introduced by the Federal Republic of Germany for compensating victims of Nazi persecution. As was correctly observed more than 20 years ago in an enlightening overview of this important precedent: "... the payments have meant (for numerous victims) the difference between abject poverty and a dignified life with modest security. This does not mean that complete or even genuine restitution has been made. The persecutions by the Nazi regime were unparalleled and unique in their scope and inhumanity. They cannot be atoned and cannot be forgotten. However, from an historical and legal point of view, the compensation programme and reparations constitute a unique operation."[98]

* * * * *

Translation: (BEG v. Sep.1953)

§ 8

(1)Entitlement to Restitution exists when the persecuted

1. on January 1, 1947 had his legal residence or permanent domicile within the jurisdiction of this law;

2. before January 1, 1947 died or emigrated, was deported or expelled, but had his last local residence or permanent domicile within the jurisdiction of this Law;

3. is a war veteran according to the Law on Assistance to War Veterans (Heimkehrergesetz) of June 19, 1950 (Bundesgesetzblatt p. 221) in the version of the Law on Supplement and Amendment to the Law on Assistance to War Veterans of October 30, 1951 (Bundesgesetzbl. I p. 875, 994) took up his residence or permanent domicile in the jurisdiction of this Law.

4. is a displaced person in the sense of §§ 1 and 2 of the Law on Matters of Displaced Persons and Refugees (Bundesvertriebenengesetz) of May 19, 1953 (Bundesgesetzbl. I p. 201) took up residence or permanent domicile within the jurisdiction of this Law;

5. is recognized as a refugee from the Soviet Occupied Zone in the sense of § 3 of the Law on Mat-

ters of Displaced Persons and Refugees of May 19, 1953 (Bundesgesetzbl. I p. 201) and took up residence or permanent domicile within the jurisdiction of this Law;

6. on January 1, 1947 stayed in a camp for Displaced Persons within the jurisdiction of this Law, and

either

after December 31, 1946 emigrated from the jurisdiction of this Law

or

as homeless foreigner entered into the jurisdiction of German authorities, or obtained German citizenship.

(2) the conditions for entitlement per Section 1 do not apply as far as for particular groups of persecuted (§§ 67 to 76) different rules exist. (3) For damages to real property exists entitlement to restitution regardless of residence or permanent domicile of the persecuted, if the real property is located within the jurisdiction of this Law.

THIRD TITLE
Stateless and Refugees in the Sense of the Geneva Convention

§ 160

(1) The persecuted who is at the time of enactment of this Law without nationality or a refugee in the sense of the Geneva Convention of July 28, 1951 and is not being cared for and

supported by any country or inter-governmental organization for any harm suffered or has not received a cash settlement has a claim for compensation for harm to body or health and to freedom.

(2) The persecuted who in the sense of the Geneva Convention is without nationality or a refugee is entitled to a claim according to Section 1, even if he obtained a new citizenship after the end persecution. This does not apply when the persecutee as an Austrian through the unification of Austria with the German Reich obtained German citizenship and became stateless because of the loss of that citizenship.

(3) The survivor of a persecutee who belonged to the group of persons named in Section 1 and 2 is entitled to claim compensation for harm to life. The claim also exists when the survivor belongs to the group of persons named in Section 1 and 2.

(4) As far as claims under §§ 150 to 159 exist, those regulations remain unchanged.

TRANSLATION

United Restitution Organization (URO)
New York Office
50 West 77th Street * New York 24, N,Y,
* Phone:SU 7-7500 Cable:Am.

November 22, 1955
Our Ref. Dep.C—KW/mm

Mr. Hugo PRINCZ
561 Cornell Str. Perth Amboy
New Jersey

Dear Mr. Princz,

I received the file concerning you according to which you give us power of attorney and our visit. Please excuse that at the visit an error occurred in our information department.

Upon examination of your file I note that you were an American citizen at the time of your persecution. For this reason and the further reason that on January 1, 1947 you were not a resident within the territory of the German Reich, you are not entitled to a claim for compensation under the Federal Compensation Law. Therefore, we must decline to represent you.

You are at liberty to withdraw the claim previously filed in Germany. In the event you desire to proceed in this matter, we have to refer you to others for possible representation.

With best regards.

s/ Dr. Kurt Wehle

4645 Reservoir Road, N.W.
Washington, D.C. 20007
December 8, 1987

RX 321.32
K-St
Steven R. Perles, Esq.
Attorney and Counselor at Law
1) Suite 500
1320 - 19th Street, N.W.
Washington, D.C. 20036

Dear Mr. Perles:

I have received the reply of the Federal Foreign Office in Bonn concerning Mr. Hugo Princz's compensation claim.

It is, in fact, not correct that Mr. Princz could not obtain indemnification because he was an American citizen.

The Final Compensation Act of 1965 established a special fund for victims of nazi persecution who had been imprisoned in concentration camps for at least six months, and who under the previous Federal Compensation Act of 1953, were not eligible for compensation.

As Mr. Princz was in concentration camps for about three years, he would have been entitled to a compensation of approximately DM 10,000.——DM 15,000.—, if he had applied before December 31, 1969.

The Federal Foreign Office informs me that this provision of the 1965 Act was announced and widely published in Jewish papers and in publications in the United States so that every interested person had access to that information.

Unfortunately, the time limit for filing such an application expired 18 years ago.

As there had existed a possibility for compensation in the past, the Federal Foreign office was not in a position to include Mr. Princz's case in its proposals to the German Bundestag concerning classes of victims who, for legal or formal reasons, could not obtain compensation.

The Federal Foreign Office suggests that you re-activate Mr. Princz's application for a grant from the hardship fund administered by the Jewish Claim Conference.

It might be helpful to advise the Claims Conference that Mr. Princz, although being a resident of the United States, was not in a position to apply for a grant from the above mentioned special fund under Article V BEG-Schlussgesetz (Final compensation Act), and explain the reasons for which he could not do so.

I am very sorry that I cannot be of immediate help to Mr. Princz, and that the above mentioned provision was not known to me because, at the time it was operative, I had other than legal functions.

Sincerely yours,
gez.

Elfriede G. Krüger
Counselor
and Consul General

PROTOCOL No. 1

Drawn up by Representatives of the Government of the Federal Republic of Germany and of the Conference on Jewish Material Claims against Germany

REPRESENTATIVES of the Government of the Federal Republic of Germany and of the Conference on Jewish Material Claims against Germany have met in The Hague to discuss the extension of the legislation existing in the Federal Republic of Germany for the redress of National-Socialist wrongs and have agreed on a number of principles for the improvement of the existing legislation as well as on other measures.

The Government of the Federal Republic of Germany declare that they will take as soon as possible all steps within their constitutional competence to ensure the carrying out of the following programme:

1. COMPENSATION

1. The Government of the Federal Republic of Germany is resolved to supplement and amend the existing compensation legislation by a Federal Supplementing and Co-ordinating Law (*Bundesergänzungs-und-Rahmengesetz*) so as to ensure that the legal position of the persecutees throughout the Federal territory be no less favourable than under the General Claims Law now in force in the US Zone. Insofar as legislation now in force in the Länder contains more favourable regulations these will be maintained.

The provisions contained hereinafter shall apply throughout the whole territory of the Federal Republic.

2. Jurisdictional gaps resulting from the residence and dateline requirements of the compensation laws of the various Länder will be eliminated. A change in residence from one *Land* to

another shall not deprive anyone of compensation.

3. Where residence and dateline requirements are applicable under compensation legislation, compensation payments for deprivation of liberty shall be granted to persons who emigrated before the dateline and had their last German domicile or residence within the Federal territory.

4. Persecutees who were subjected to compulsory labour and lived under conditions similar to incarceration shall be treated as if they had been deprived of liberty by reason of persecution.

5. A persecutee who, within the boundaries of the German Reich as of December 31, 1937, lived "underground" under conditions similar to incarceration or unworthy of human beings shall be treated as if he had been deprived of liberty by reason of persecution, in the meaning of that term under compensation legislation.

6. Where a persecutee died after May 8, 1945, his near heirs (children. spouse or parents) shall be entitled to assert his claim for compensation for deprivation of liberty, if this appears equitable by reason of the connection between the persecutee's death and persecution or of the indigence of the claimant. This provision shall not apply if the deceased was at fault in failing to file his claim in time.

7. Where the computation of annuities payable to persecutees is or will be based on the amounts of pensions payable to comparable categories of officials, all past and future changes in the pensions payable to comparable categories of officials will also be applied as from the effective date of the future Federal Supplementing and Co-ordinating Law, to the annuities payable to persecutees. If at that time the persecutee has received no such annuities, such changes shall be effective as of April 1, 1952.

8. The future Federal Supplementing and Co-ordinating Law in supplementing the present legislation will grant to members of the free professions, including self-employed persons in trade and industry, agriculture, and forestry, the choice between a capital payment and annuities as compensation for loss of opportunities to earn a livelihood (Existenzschüden). The capital payment shall be granted up to a ceiling of DM 25.000 in each case as compensation for the damage suffered before the former vocation was fully resumed. Instead of the capital payment the persecutee may elect an appropriate annuity corresponding to his former living standards. The annuity shall, however, not exceed DM 500 per month. The persecutees shall be entitled to such choice only if at the time the choice is made, he is unable to or cannot be reasonably expected to fully resume his former vocation. The choice shall be final. If the beneficiary elects annuities, payments will be computed as from the day one year prior to the date of election.

9. The Government of the Federal Republic of Germany will provide compensation to persons who suffered losses as officials or employees of Jewish communities or public institutions within the boundaries of the German Reich as of December 31, 1937.

Insofar as these persons have a claim against public authorities for compensation under existing or future compensation legislation, they will receive temporary relief pending the beginning of these compensation payments. If the persons involved do not have such claims, their maintenance will be secured by monthly payment based on their former salaries.

10. The future Federal Supplementing and Co-ordinating Law shall, in providing compensation for damage to economic prospects, include in an appropriate manner for compensation for damage to and vocational and professional training.

11. Persecutees who have their domicile or permanent residence abroad shall be compensated for deprivation of benefits accruing to victims of the First World War if they were deprived of such benefits by the National-Socialist regime of terror because of their political convictions, race, faith or ideology.

12. Persons who were persecuted because of their political convictions, race, faith or ideology and who settled in the Federal Republic or emigrated abroad from expulsion areas within the meaning of that term in the "Equalization of Burden" law shall receive compensation for deprivation of liberty and damage to health and limb, in accordance with the provisions of the General Claims Law of the US Zone. This applies only if they settled in the Federal Republic or emigrated abroad before the general expulsions took place and if it may be assumed that the persecutee would have been subjected to the expulsion measures taken against nationals and ethnic Germans in connection with the events of the Second World War. Survivors of such persecutees shall receive annuities if all other conditions prescribed in the General Claims Law of the US Zone for the grant of survivors' annuities are fulfilled.

Such persecutees shall receive compensation for special levies, including the Reich Flight Tax, which were imposed upon them as a result of acts of terror of the regime, either by law or arbitrarily. Such special levies shall be taken into account up to a ceiling of RM 150.000 in each individual case. The claim shall be converted at the rate of DM6.5 for RM 100, in the same way as savings accounts of expellees from the East are being converted.

For damage to economic prospects compensation shall be paid insofar as such damage made it impossible for the persecutee to provide for old-age maintenance, wholly or in part, our of his own resources. In such the damage will be determined,

taken into account aslo up to a ceiling of RM150.000 in each case, and converted at the rate of DM6.5 for FM 100.

If the claimant is age or permanently incapable of earning a livelihood because of illness or physical disability and the compensation paid to him for personal damages and for special levies, together with his own property and his other income, is insufficient to provide for his livelihood he may elect, instead of a capital payment for damage to his economic prospects, a requisite annuity.

Compensation in accordance with Paragraph I Aa also be paid to persecutees who emigrated abroad or settled in the Federal Republic during or after the time the general expulsions took place.

13. The residence and date-line requirements of the General Claims Law of the US Zone shall not be applied to persecutees who suffered damage under the National-Socialist regime of terror and who, as political refugees from the Soviet Zone of occupation, moved into the Federal Republic and legally established their permanent residence there (so-called "double-persecutees").

14. Persons who were persecuted for their political convictions, race, faith or ideology during the National-Socialist regime of terror and who are at present stateless or political refugees and who were deprived of liberty by National-Socialist terror acts shall receive appropriate compensation for deprivation of liberty and damage to health and limb, in accordance with the basic principles of the General Claims Law of the US Zone and in line with (in Anlehnung an) the compensation payments established therein, i.e. as a rule, not less than¾ of those rates. This does not apply, however, if the persecutee's needs are or were provided for by a State or an international organization on a permanent basis or by way of a capital payment because of the damage suffered from per-

secution. Persecutees who acquired a new nationality after the end of persecution shall be assimilated to stateless persons and political refugees.

Survivors of such persecutees shall receive corresponding annuities if all other conditions established in the General Claims Law of the US Zone for the grant of survivors' annuities are fulfilled. If the compensation granted to the claimant, together with his own property and other income, is insufficient to provide for his livelihood he shall, in recognition of the persecution, be granted a corresponding equalization payment out of the Hardship Fund referred to elsewhere which is to be established by the Government of the Federal Republic of Germany.

The provisions contained here shall not be applicable insofar as a persecutee is covered by the provisions of 12 above.

15. The Government of the Federal Republic of Germany will endeavour to carry out the whole compensation programme as soon as possible but no later than within ten years. They will see to it that the necessary funds shall be made available, as from the financial year 1953-54. The funds to be made available for any specific financial year shall be fixed in accordance with the Federal Republic's capacity to pay.

16. The Federal Supplementing and Coordinating Law shall, in recognition of general social principles, provide that claims of persons entitled to compensation who are over 60 years of age, or who are needy, or whose earning ability has been considerable impaired because of illness or physical disability shall be accorded priority over all other claims, both in adjudication and payment. Full compensation for deprivation of liberty and for damage to life and limb shall in these cases be payable at once. Property damage and loss of opportunities to earn a livelihood insofar as they are compensated by capital

payment shall be payable at once up to an amount of DM5.000 in each case. Insofar as payments are granted to such beneficiaries by way of annuities full payment shall begin at once.

17. The Government of the Federal Republic of Germany will see to it that, taking into account the principles contained in 15 above, funds shall be provided in such amounts, during the first financial years, that not only the claims referred to in 16 above can be satisfied, but in addition, claims of other beneficiaries can also be appropriately dealt with.

18. No distinction shall be made concerning the treatment of claimants living within and those living outside of the territory of the Federal Republic insofar as compensation is concerned.

19. Where evidence is required equitable consideration shall be given to the probative difficulties resulting from persecution. This shall apply particularly to the loss or destruction of files and documents, and to the death or disappearance of witnesses. The compensation authorities shall *ex officio* make the investigations to establish the relevant facts and seek appropriate evidence. The special conditions affecting the persecutees shall be taken into due consideration in interpreting the terms "domicile" ("rechtmässiger Wohnsitz") or " 'residence" ("gewöhnlicher Aufenhalt").

20. A principle corresponding to the legal presumption of death contained in the restitution laws of the US and British Zones shall be inserted in the Federal Supplementing and Coordinating Law. This presumption of death shall also be applicable in the procedure before the Probate Courts dealing with the issuance of a certificate of inheritance (*Erbschein*), provided that the validity of the certificate of inheritance be restricted to the compensation procedure.

II. RESTITUTION

1. The legislation now in force in the territory of the Federal Republic of Germany concerning restitution of identifiable property to victims of National-Socialist persecution shall remain in force without any restrictions, unless otherwise provided in Chapter Three of the *Convention on the Settlement of Matters Arising out of the War and the Occupation.*

2. The Federal Government will see to it that the Federal Republic of Germany accepts liability also for the confiscation of household effects in transit (*Umzugsgut*) which were seized by the German Reich in European ports outside of the Federal Republic, insofar as the household effects belonged to persecutees who emigrated from the territory of the Federal Republic.

3. The Government of the Federal Republic of Germany will see to it that payments shall be ensured to restitutees—private persons and successor organizations appointed pursuant to law—of all judgements or awards which have been or hereafter shall be given or made against the former German Reich under restitution legislation. The same shall apply to amicable settlements. Judgments or awards based on indebtness in RM of the former Reich for a sum of money (*Geldsummenansprüche*) shall be converted into DM at the rate of ten RM for one DM. Judgments or awards for compensation for damage (*Schadenersatz*) shall be made in DM and in accordance with the general principles of German Law applicable to the ment of compensation for damage.

In accordance with Article 4, paragraph 3 of Chapter Three of the Convention on the Settlement of Matters Arising out of the War and the Occupation, the obligation of the Federal Republic of Germany shall be considered to have been satisfied when the judgements and awards shall have been paid or when

the Federal Republic of Germany shall have paid a total of DM 1.500 million. Payments on the basis of amicable settlement shall be included in this sum. The time and method of payment of such judgments and awards shall be included in accordance with the Federal Republic capacity to pay. The Government of the Federal Republic of Germany will, however, endeavour to complete these payments within a period of ten years. In settling the liabilities of the German Reich the claimants in the French Zone shall not be treated less favorably than those in other parts of the Federal territory.

4. Monetary restitution claims against the German Reich up to an amount of DM5.000 in each case, as well as claims of beneficiaries who are over 60 years of age, or are needy or whose earning ability has been considerably impaired because of illness or physical disability shall be accorded priority over all other monetary restitution claims against the German Reich, both in adjudication and payment.

6. In equalizing the burdens arising from the war ("Lastenausgleich") the position of persons entitled to restitution is given special considerations as concerns the taxon property. Reference is made to the particulars contained in the provisions of the Law on the Equalization of Burdens of August 14, 1952 (BGBI. LS. 446).

7. It is the intention of the Government of the Federal Republic of Germany in implementing the principle of law contained in Article 359, paragraph 2 of the Law on the Equalization of Burdens to brig about the following:

a) Compensation in accordance with the principles of the Equalization of Burdens Law shall be provided for damage to and losses of such material assets as are described in Section 12 paragraph 1, subparagraphs 1 and 2 thereof if the persecuted suffered these losses as a result of confiscation

as defined in the restitution legislation, and in the expulsion areas within the meaning of that term in the Equalization of Burdens of Law. This applies, however, only if the losses occurred before the general expulsions took place and if it may be assumed that the persecutee would have been subjected to the expulsion measures taken against German nationals and ethnic Germans in connection with the events of the Second World War.

b) In implementing the principle of law referred to above, the provision of the Equalization of Burdens Law requiring that the persecutees had his permanent residence in the Federal Republic or in West Berlin on December 31, 1950, shall not apply.

c) The indemnification of persecutees from expulsion areas whose permanent residence is outside the boundaries of the former German Reich will be taken over only in part. This part shall be determined by taking into account the distribution of expellees between the Federal Republic and the Soviet Zone of occupation.

d) In cases where household effects in transit belonging to such persecutees were confiscated in European ports outside of the Federal Republic these confiscations shall be treated as confiscation within the meaning of paragraph a) above.

IN WITNESS WHEREOF the Chancellor and Minster for Foreign Affairs of the Federal Republic of Germany, of the one part, and the Representative of the Conference on Jewish Material Claims against Germany, duly authorized thereto, of the other part, have signed this Protocol. DONE at Luxembourg this 10th day of September 1952, in the English and German languages, each in two copies, the text in both languages being equally authentic.

For the Government of the Federal Republic
of Germany
(Sgd.) Adenauer
For the Conference on Jewish Material Claims
against Germany
(Sgd.) Goldmann

PROTOCOL No. 2

Drawn up by the Representatives of the Government of the Federal Republic of Germany and of the Conference on Jewish Material Claims against Germany consisting of the following Organizations:
Agudath Israel World Organization
Alliancek Israelite Universelle
American Jewish Committee
American Jewish Congress
American Jewish Joint Distribution Committee
American Zionist Council
Anglo-Jewish Association
B'Nai Brith
Board of Deputies of British Jews
British Section, World Jewish Congress
Canadian Jewish Congress
Central British Fund
Conseil Representatif des Juif de France
Council for the Protection of the Rights and Interests ofJews from Germany
Delegacion de Asociaciones Israelitas Argentinas J(D.A.I.A.)
Executive Council of Australian Jewry
Jewish Agency for Palestine
Jewish labor Committee
Jewish War Veterans of the U.S.A.
South African Jewish Board of Deputies
Synagogue Council of America
World Jewish Congress
Zentralrat der Juden in Deutschland

The Government of the Federal Republic of Germany, of the one part, and the Conference on Jewish Material Claims against Germany, of the other part,

WHEREAS

The National Socialist regime of terror confiscated vast amounts of property and other assets from Jews in Germany and in territories formerly under German rule;

AND WHEREAS

Part of the material losses suffered by the persecutees of National-Socialism is being made good by means of international German legislation in the fields of restitution and indemnification and whereas an extension of this internal German legislation, in particular in the field of indemnification, is intended;

AND WHEREAS

Considerable values, such as those spoliated in the occupied territories, cannot be returned, and that indemnification for many economic losses which have been suffered cannot be made because, as a result of the policy of extermination pursued by National-Socialism, claimants are no longer in existence;

AND WHEREAS

A considerable number of Jewish persecutees of National-Socialism are needy as a result of their persecution;

AND HAVING REGARD

To the statement made by the Federal Chancellor, Dr. Konrad Adenauer, in the Bundestag on September 27, 1951, and unanimously approved by that body;

AND HAVING REGARD

To the Agreement this day concluded between the State of Israel and the Federal Republic of Germany;

AND HAVING REGARD

To the fact that duly authorized representatives of the Government of the Federal Republic of Germany and of the Conference on Jewish Material Claims against Germany have met at The Hague;

Have therefore this day concluded the following Agreement:

Article 1

In view of the considerations hereinbefore recited the Government of the Federal Republic of Germany hereby undertakes the obligation towards the Conference on Jewish Material Claims against Germany to enter, in the Agreement with the State of Israel, into a contractual undertaking to pay the sum of 450 million Deutsche Mark to the State of Israel for the benefit of the Conference on Jewish Material Claims against Germany.

Article 2

The Federal Republic of Germany will discharge their obligation undertaken for the benefit of the Conference on Jewish Material Claims against Germany in the Agreement between the Federal Republic of Germany and the State of Israel by payments made to the State of Israel in accordance with Article 3 paragraph (c) of the said agreement. The amounts so paid and transmitted by the State of Israel to the Conference on Jewish Material Claims against Germany will be used for the relief, rehabilitation and resettlement of Jewish victims of National Socialist persecution, according to the urgency of their needs as determined by the Conference on Jewish Material Claims against Germany. Such amounts will, in principle, be used for the benefit of victims who at the time of the conclusion of the present Agreement were living outside of Israel.

Once a year the Conference on Jewish Material Claims against Germany will inform the Government of the Federal Republic of Germany of the amounts transmitted by Israel, of the amounts expended as well as of the manner in which such expenditure has been incurred. If, for any adequate reasons, the Conference on Jewish Material Claims against Germany has not spent the moneys it has received, it shall inform the Government of the Federal Republic of Germany of the said reason or reasons.

The information herein referred to shall be supplied within one year from the end of the calendar year in which the relevant amount had to be transmitted to the Conference in pursuance of Article 3 paragraph (c) of the Agreement between the State of Israel and the Federal Republic of Germany.

The Conference on Jewish Material Claims against Germany undertakes to spend, not later than three months before the penultimate instalment payable to Israel falls due, all moneys referred to in Article 3 paragraph (c) of the Agreement between the State of Israel and the Federal Republic of Germany and which have been received seven months prior to the date on which the said penultimate instalment becomes due as aforesaid, and to inform the Government of the Federal Republic of Germany accordingly.

Article 3

The Conference on Jewish Material Claims against Germany shall be entitled, after prior notification to the Government of the Federal Republic of Germany, to assign its rights and obligations derived from the provisions of this Protocol and of the Agreement between the Federal Republic of Germany and the State of Israel to one or several Jewish organizations which are qualified to assume such rights and obligations.

Article 4

Disputes arising out of the interpretation and the application of Articles 2 and 3 of this Protocol shall be decided, in accordance with the provisions of Article 15 of the Agreement between the State of Israel and the Federal Republic of Germany, by the Arbitral Commission established by virtue of Article 14 of the said Agreement.

IN WITNESS WHEREOF the Chancellor and Minister for Foreign Affairs of the Federal Republic of Germany, of the one part, and the representative of the Conference on Jewish Material Claims against Germany, duly authorized thereto, of the other part, have signed this Protocol.

Done at Luxembourg this tenth day of September 1952, in the English and German languages, each in two copies the text in both languages being equally authentic.

For the Government of the Federal Republic of Germany signed: Adenauer

For the Conference on Jewish Material Claims against Germany signed: Nahum Goldmann

Der Bundesminister der Finanzen 53117 Bonn

Mr. Lloyd Bentsen Secretary of the Treasury
15th Street
Pennsylvania Avenue, N.W.
Washington, D.C. 20220

U. S. A.

12 November 1994

Dear Colleague:

At a meeting last April on the occasion of the IMF / World Bank spring meeting you raised the case of Hugo Princz, who filed a claim for compensation before a U.S. court in the amount of US $ 17 million against the Federal Republic of Germany. First of all, I should like to emphasize that the German Government deeply regrets the injustice that Mr. Princz has had to suffer.

We are all aware of the fact that no compensation in whatever form can make undone the terrible suffering of Holocaust victims. Yet, the Federal Republic of Germany has done everything possible to compensate the survivors of the Holocaust at least financially. Within the limits imposed by law, Mr. Princz has the same rights as any other Nazi victim who filed a claim under German law to receive compensation for suffering under Nazi persecution. His American citizenship does not prevent him from filing such a claim since the relevant law was amended in 1965 to the effect that Mr. Princz and other similarly affected foreign nationals became entitled to claim compensation. Despite the fact that this amendment

was widely publicised in the American media, Mr. Princz did not file a claim before the final deadline of 31 December 1969.

Following German unification the German government provided a further $ 690 million in 1992 after negotiations with the Jewish Claims Conference to grant assistance to Nazi victims such as Mr. Princz who had not received any compensation for various reasons (e.g. failure to observe the time limit). Up until today, Mr. Princz has refused to file a claim with the Jewish Claims Conference.

The Jewish Claims Conference has granted monthly pensions in the amount of $ 330 (at current exchange rates) to close on 4,000 victims living in the U.S.A. They also received a lump-sum payment to tide them over until the payment of the pension started. More pension commitments are expected to be made in a large number of cases.

For reasons of fairness, the Federal Republic of Germany deems it appropriate that in view of the large number of entitled persons and the limited resources available similar cases should be treated equitably on the basis of existing laws and agreements. To abandon this principle in one individual case would unravel the entire German system of compensation which was developed in close consultation with your administration.

If Mr. Princz's claim were granted, even to a small extent, this might result in additional demands from all over the world totalling many billions of dollars, in view of the large number of Holocaust survivors; this would quite substantially restrict the financial scope available to the Federal Republic of Germany for pursuing future-oriented policies. In addition considering the massive financial endeavours the Federal Republic of Germany has now been undertaking for more than years to compensate Nazi victims, there would be no way in which this could be rendered acceptable to the German public.

Against this background, the German government is deeply concerned about the intention of the US Congress to amend with retroactive effect the Foreign Sovereign Immunities Act (FSIA) with explicit reference to the Federal Republic of Germany in the context of the Hugo Princz case, thus creating a "lex Germany".

On the last day of its session, the House of Representatives adopted amendment H.R. 934 of the Foreign Sovereign Immunities Act (FSIA) entitled "An act to amend title 28, United States Code". This amendment envisages that the Federal Republic of Germany would no longer be able to invoke sovereign immunity in those cases where citizens of the United States became victims of acts of genocide during World War II. Unfortunately, it is to be feared that the Senate might adopt this amendment at its meeting on 30 November 1994.

Such an act would be without precedent in international law. It is expressly and solely directed against the Federal Republic of Germany and would thus single out in an inacceptable manner an important ally and partner. I am greatly concerned that such an act might severely impair German-American relations, which have so far been built on mutual trust and deep friendship. The response of the German public would be disbelief and deep disappointment.

The proposed amendment aims to terminate the operation of a compensation system which was developed to ensure an equitable distribution of available resources to the great number of victims, in particular victims of Jewish faith, and has involved considerable financial payments by the Federal Republic of Germany; this system has gained world-wide acknowledgement over decades.

Under the current system, the Federal Republic of Germany has provided compensation in the volume of $ 74.3 billion; a

further $ 10 to 12 billion will be paid out as pensions over the coming years. A large share of these pensions is paid to approximately 40,000 entitled victims living in the U.S.A.

If the amendment should enter into force, these payments based on German law and international agreement with, for instance, the State of Israel and the Jewish Claims Conference, would be subject to a full-scale legal review and possible modification by U.S. courts. In this context I should like to point out that the United States itself agreed to the German principles underlying compensation stipulated in the 1952 Convention on the Settlement of Matters Arising out of the War and the Occupation. In the exchange of letters of 27./28. September 1990 relating to that convention the principles established in the 1952 convention relating to the compensation of victims of Nazi persecution and the relevant provisions of the German compensation laws were reiterated at the express wish of the United States.

I am certain that you wish, as I do, to avoid a profound and lasting strain on the relations between our two countries. I would therefore urgently request you to use your influence to prevent adoption of the amendment to the Foreign Sovereign Immunities Act in Congress, which constitutes a marked and unwarranted discrimination against Germany.

Yours sincerely,

sgd.
(Dr. Theo Waigel)

TRANSLATION

Consulate General
of the Federal Republik
of Germany

460 Park Ave.
New York, N.Y. 10022

File NR.:RK 552 WG Princz

Mr. Hugo Princz
312 Harrison Avenue
Highland Park, N.J. 08904

April 10, 1991

Dear Mr. Princz,

thank you for your letter of March 11, 1991 asking to be compensated for the injustice inflicted upon you by the Nazis in concentration camps. I have been requested to answer your letter in my capacity as head of the Legal and Consular Section of the German General Consulate New York.

Please excuse that the answer was somewhat delayed. The reason is that I had to obtain the file in this matter from the German Embassy in Washington, DC.

After extensive study of all the documents available and after consultation with experts on the restitution laws I must advise you that German authorities can not make any payments in your case. As has been previously explained to you, you failed to make your claim prior to December 31,1969 the final date under the Federal Restitution Law. As you also know, victims who have missed without their fault the mentioned filing date, can receive payments from the Jewish Claims Conference from a special fund provided by the German Federal Parlia-

ment. The Jewish Claims Conference has received the sum of 1,2 billion marks for this purpose. In accordance with the wish of the German legislature, it is the Jewish Claims Conference alone which decides whether payments should be made In cases where claims were filed late. Therefore, I have no choice, but to again direct you to their address. I see no possibility for the "settlement" you are suggesting.

You Indicated that you plan to bring this matter to the attention of the American public; before doing so, I would like to remind you that the U.S. State Department via its embassy in Bonn has already intervened on your behalf with the German Foreign Office. The Foreign Office has at that time explained the law to the American Embassy. There is nothing I can add to this presentation.

With kind regards,

s/ Volker Klein

FRANCE-FEDERAL REPUBLIC OF GERMANY-UNITED KINGDOM-UNITED STATES EXCHANGE OF NOTES CONCERNING THE RELATIONS CONVENTION AND THE SETTLEMENT CONVENTION*

[Done at Bonn, September 28, 1990]
§Cite as 30 I.L.M. 454 (1991)§

Embassy of the United States of America

September 28, 1990

His Excellency
Dr. Hans Werner Lautenschlager,
State Secretary,
Ministry of Foreign Affairs,
Federal Republic of Germany.

Excellency,

I have the honor to acknowledge receipt of your Note of September 27, 1990 concerning the Relations Convention and the Settlement Convention, the English text of which reads as follows:

> "I have the honour to refer to the discussions which have taken place between representatives of the Federal Republic of Germany, the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America, and, on behalf of the Government of the Federal Republic of Germany to propose the following:

"1. The Convention on Relations between the Three Powers and the Federal Republic of Germany of 26 May 1952 (as amended by Schedule I to the Protocol on the Termination of the Occupation Regime in the Federal Republic of Germany, signed at Paris on 23 October 1954) ("The Relations Convention") shall be suspended upon the suspension of the operation of quadripartite rights and responsibilities with respect to Berlin and to Germany as a whole, and shall terminate upon the entry into force of the Treaty on the Final Settlement with respect to Germany, signed at Moscow on 12 September 1990.

"2. Subject to paragraph 3 below, the Convention on the Settlement of Matters Arising out of the War and the Occupation of 26 May 1952 (as amended by Schedule IV to the Protocol on the termination of the Occupation Regime in the Federal Republic of Germany, signed at Paris on 23 October 1954) ("the Settlement Convention) shall be suspended and shall terminate at the same time as the Relations Convention; this also applies to the letters and exchanges of letters relating to the Relations Convention and the Settlement Convention."

"3. The following provisions of the Settlement Convention shall, however, remain in force:

Chapter One:	Article 1, paragraph 1, first sentence up to and including "...legislation enacted by the Occupation Authorities", and paragraphs 3, 4, and 5
	Article 2, paragraph 1
	Article 3, paragraphs 2 and 3

	Article 5, paragraphs 1 and 3
	Article 7, paragraph 1
	Article 8
Chapter Three:	Article 3, paragraph 5(a) of the Annex
	Article 6, paragraph 3 of the Annex
Chapter Six:	Article 3, paragraphs 1 and 3
Chapter Seven:	Article 1
	Article 2
Chapter Nine:	Article 1
Chapter Ten:	Article 4

In addition, paragraph 7 of the letters of 23 October 1954 from the Federal Chancellor to each of the three High Commissioners relating to facilities for Embassies and Consulates, as well as the letters of 23 october 1954 in confirmation from the High Commissioners, shall remain in force.

"4. (a) The Government of the Federal Republic of Germany declares that it shall take all adequate measures to ensure that the provisions of the Settlement Convention which remain in force shall not be circumvented in the territory of the present German Democratic Republic and in Berlin.

(b) With regard to Article 11 of Chapter One of the Settlement Convention:

The Government of the Federal Republic of Germany is aware of the continued existence of I.G. Farbenindustrie A.G.I.L. under the original name and shall use its best endeavours to achieve a satisfactory solution consistent with the objectives which were expressed in Article 11 of Chapter One.

(c) With regard to Chapters Three, Four and Five of the Settlement Convention:

The Government of the Federal Republic of Germany confirms that the deletion of Chapters Three, Four and Five shall not affect the continued application of the principles set forth therein in respect of internal restitution, compensation for victims of Nazi persecution and external restitution, as well as the continued application of the corresponding provisions of the Federal Restitution Law and the Federal Compensation Law. The compensation pensions awarded to the victims of Nazi persecution and to their descendants shall continue to be granted in accordance with the applicable provisions.

The Government of the Federal Republic of Germany shall ensure that upon suspension of the Settlement Convention the jurisdiction of the Supreme Restitution Court is transferred to German courts.

The Government of the Federal Republic of Germany states that the Federal Restitution Law and the Federal Compensation Law will be extended to the territory of the present German Democratic Republic.

In this respect further provisions that take account of the conditions prevailing there are required.

(d) With regard to Chapter Nine of the Settlement Convention:

Articles 2 and 3 of Chapter Nine have not been retained on the assumption that all questions dealt with therein have been settled as far as the Parties to the Settlement Convention are concerned.

The Government of the Federal Republic of Germany has assumed the responsibility for the determination and satisfaction of any claims by persons subject to its jurisdiction which are referred to in Article 3 and which may still be asserted under German law.

"If the Governments of the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America agree to the content of this Note, this Note and the Notes in reply thereto expressing your Governments' agreement, shall constitute an Agreement between our four Governments, which shall enter into force upon receipt of the last reply expressing agreement. The Government of the Federal Republic of Germany shall inform the other Governments of the receipt of that last reply.

"The English and French texts of this Note are attached hereto, all three texts being equally authentic."

I have the honor to inform you that the Government of the United States of America agrees to the content of Your Excellency's Note. Accordingly, Your Excellency's Note, this reply and the replies of the Ambassador of the French Republic and the Ambassador of the United Kingdom of Great Britain and Northern Ireland expressing their Governments' agreement shall constitute an Agreement between our Govern-

ments, which shall enter into force upon receipt of the last reply expressing agreement.

Accept, Excellency, the renewed assurances of my highest consideration.

Translation

AGREEMENT
BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE GERMAN DEMOCRATIC REPUBLIC TO IMPLEMENT AND INTERPRET THE AGREEMENT SIGNED IN BERLIN ON AUGUST 31,1990 BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE GERMAN DEMOCRATIC REPUBLIC TO ACCOMPLISH THE UNIFICATION OF GERMANY -UNIFICATION TREATY-

Article 2

The contracting parties express their intention to see to it that the Resolution of the Peoples Chamber of the German Democratic Republic of April 14, 1990 for a just compensation of the material losses of victims of the Nazi regime is implemented. The Government of the Federal Republic of Germany is prepared to continue its policy to pursue an agreement to establish an additional fund for hardship payments to persecutees who have so far not received any or only minor compensation in accordance with the laws of the Federal Republic of Germany.

Bonn, October 3rd 1980
VI A 6—0 1470D - 249/80

VI A 4 - 0 1470 (CC) - 34/92 October 9th, 1992

Agreement

between

the Federal Minister of Finance

and

the Conference on Jewish Material Claims against Germany (referred heronto as Claims Conference)

according to

article 2 of the agreement of September 18th, 1990 concerning the achievement of the unification of Germany between the Federal Republic of Germany and the German Democratic Republic to execute and interpret the Unification Treaty, executed In Berlin August 31st, 1990

concerning

an additional fund solution for granting benefits in cases of severity to traced persons according to the definition of § 1 Federal Compensation Act, who until now have obtained no or little compensations according to the laws of the Federal Republic of Germany.

I. Financial aids paid once

The Payment of financial aids to be granted once shall be continued according to the provisions of the guidelines of the Federal Government concerning the granting of benefits to traced Jewish persons to give compensation in single cases

of severity within making amends of October 3rd, 1980 (Federal Register No. 192 of October 14th, 1980).

For that purpose Claims Conference shall receive in total up to DM 200 million until 1999.

The proposed distribution of means within the years 1993—1999 can be seen in the appendix, which is a part of this agreement.

II. Current financial aids

1. Persons provably having been arrested at least for 6 months in a concentration camp according to the definition of §§ 31 Sec. 2, 42 Sec. 2 Federal Compensation Act or having suffered from 18 months of ghetto imprisonment or had to hide living in a situation that violates basic human fights or elsewhere similar to the forementioned may obtain current financial aids up to DM 500 per month, as far as they suffered from a severe health damage because of the treatment and are in a special situation of emergency and fullfill the requirements of § 2 of the October 3rd 1980 guidelines.

Current financial aids will be granted for the space of time the recipient stays in a situation of emergency.

Payments In advance up to an amount of DM 5000 do not prevent from receiving current aids. As far as compensations for imprisonment have been granted, even those payments exceeding the amount of DM 5000 do not prevent from receiving current aids.

Payment of current financial aids will start August 1st, 1995.

Within the space between January 1st, 1993 and August 1st, 1995 Claims Conference will grant single payments up to DM 10000 for each case according to the provisions made in the appendix hereunder to those persons fulfilling the requirements

of Nos. II 1 and II 2 herein. For that reason an amount up to DM 217 million shall be granted.

Payments already granted by the Claims Conference within the years 1993, 1994 and 1905 have to be set off to single payments.

To traced persons filing an application according to this agreement later than December 31st 1994 no single payments shall be granted.

III
Institutions

An amount up to DM 33 million in total shall be granted for the maintenance of institutions for senior Jewish traced persons according to the appendix hereunder. Aids can be granted to investments serving the improvement of the institutions or of care possibilities for the patients. Rendering the money requests the foregoing filing of an investment plan with the Federal Minister of Finance in cooperation with the certain institution.

IV
Additional Agreements

1. Aids must be refused or refunded under the provisions of §§ 6 or 7 Federal Compensation Act

2. There is no entitlement to benefits according to this agreement. Benefits hereunder are personal and therefore neither transferable nor hereditary. Single payments already fixed according to II.4 herein can be transferred to surviving spouse or children.

3. Obtained interests must be used within the provisions of Nos. 1, II.1 and II.4 herein. The prove of use has to be given according to No. IV.5 herein.

4. Necessary costs for administration will be taken over by the Federal Republic as long as this agreement is valid.

In addition to the means for administration costs provided in the Raising Up the Means Agreement of January 24th, 1991 further means up to an amount of DM 750000 will be granted to the Claims Conference for the current fiscal year.

For the fiscal years 1993 until 1995 DM an amount up to 6 million will be granted for administration costs each year. Beginning with fiscal year 1996 up to DM 4.5 million will be granted.

Concerning the necessity of giving an evidence of means' use it is referred to No. IV.5 herein.

5. Claims Conference will give an evidence of means' use each 6 months, starting up with the coming into effect of this agreement.

Claims Conference will provide a nomination of all grantees to the Federal Minister of Finance at the end of each month, scheduling who receives benefits paid once, single financial aids or current financial aids. The schedule of granted financial aids has to contain information about residence state, sex, group of age, date of emigration, country where tracing measures took place and character of tracing measure.

Concerning the agreement expired December 31st, 1992, Claims Conference has to deliver a final report until June 30, 1993 scheduling financial in- and outputs, interest earnings, administration costs as well as number of positive decisions, negative decisions on applications over all and the means still left within the provisions of that agreement.

6. Claims Conference has to hand over an evidence of means' use to the Federal Minister of Finance concerning benefits within the provisions of No. III herein for each fiscal year expired, at least until March 31st of the following fiscal year.

7. In 1993, 1994 and 1995, payments from the Federal Minister of Finance to Claims Conference according to No. II herein will be made upon its request one month after each passing of Federal budget and can be made within the amounts scheduled in the budget for that fiscal year.

Concerning requests according to Nos. I, II.1 and IV.4 herein Claims Conference has to prove its need for the next half of the year taking Into consideration Interests and administration costs. The Federal Minister of Finance may grant an amount different from the requested one.

8. The means listed In the appendix hereunder have to be regarded as conditional to the budgetary allowance of the parliament.

9. The Bundesrechnungshof anytime may request informations about the use of means. It also has the competence to conduct controls concerning the use of means is according to the agreements stated herein with any institution or any person which or who received benefits provided under this agreement.

10. As far as annual means being listed in the appendix hereunder will not be needed for purposes stated in Nos. I, II.1 and II.4, they may be used for other purposes forementioned herein as long as payments do not exceed the over all amount granted for that year. In those cases the Federal Minister of Finance has to be informed in advance.

11. The Federal Minister of Finance agrees to earlier consultations with the Claims Conference in 1994 concerning the development of applications by numbers and conclusions could to be drawn of this development.

12. This agreement will come into effect at January 1st, 1993 after having been executed by the Federal Minister of Finance and the Claims Conference.

The agreement between the Federal Minister of Finance and the Claims Conference of January 1st, 1991 will expire the same date. Means having been ordered, but not yet spent by the Claims Conference (according to the former agreement), including interest earnings deriving from former grants, are to be granted according to this agreement.

This has no impact on the agreement of No. IV.4 herein concerning the granting of additional means for administration costs in the amount up to DM 750000 within the fiscal year 1992.

EMBASSY
OF THE
FEDERAL REPUBLIC OF GERMANY
WASHINGTON, D.C.

NOTE VERBALE No. 124/94

The Embassy of the Federal Republic of Germany presents its compliments to the Department of State and has the honor to transmit the following.

According to the enclosed copy of the letter from the Administrator of the Article 2 Fund of the Jewish Claims Conference sent to the German Ministry of Finance, Mr. Princz would be eligible to receive monthly payments and, should he file an application by December 31, 1994, a one-time payment from the said fund as well.

A copy of the enclosed letter, along with the cover letter from our attorney, has also been mailed to the legal counsel of Mr. Princz.

The Embassy of the Federal Republic of Germany avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

Washington, D.C., November 23, 1994

The United States
Department of State
Washington, D.C.

CLAIMS CONFERENCE ARTICLE 2 FUND

15 EAST STREET • SUITE 906 • NEW YORK, NY 10010
TEL. (212) 213-4034

November 9, 1994

Dr. Jürgen Quantz
Ministerialdirector
Bundesfinanzministerium
Ellerstrasse 50-54
53119 Bonn, Germany

Dear Dr. Quantz:

In reply to your inquiry, please be advised that should Mr. Hugo Princz file a claim with the Article 2 Fund, and the generally available information is confirmed, he would be eligible to receive monthly payments of DM 500 effective August 1, 1995.

Should he file an application by December 31, 1994, he would additionally be eligible to receive a one-time payment of DM 5000.

Sincerely yours,

Saul Kagan
Administrator
Article 2 Fund

SX/fr

LAW OFFICES
BERLINER, CORCORAN & ROWE
1101 SEVENTEENTH STREET, N.W.
SUITE 1004
WASHINGTON, D.C. 20036-4798
(202) 293-55555

November 23, 1994

BY FAX AND REGULAR MAIL

Steven R. Perles, Esquire
1754 Kenyon Street, N.W.
Washington, D. C. 20010

Re: Hugh Princz v. Federal Republic of Germany

Dear Mr. Perles:

Enclosed is a copy of a letter, dated November 9, 1994, signed by Saul Kagan, administrator of the Claims Conference Article 2 Fund, addressed to Dr. Quantz of the German Ministry of Finance in Bonn. The Article 2 Fund is the fund administered by the Conference on Jewish Material claims against Germany which was established in 1992 pursuant to an agreement between Germany and the Conference to compensate survivors of Nazi persecution who have not yet received compensation.

I am sending you this letter to make you aware that Mr. Princz should be eligible to receive compensation like the 70,000 persons who have applied for payments from this fund so far.

As you will note from this letter, Mr. Princz would also be eligible to receive a one-time payment of DM 5000 (approximately $3,400.00) if he files an application by December 31, 1994.

Sincerely,

Peter Heidenberger

Enclosure

TRANSCRIPT OF DECEMBER 11, 1992 HEARING

MR. HEIDENBERGER: May I briefly respond?

THE COURT: Yes, you certainly may. You certainly may.

MR. HEIDENBERGER: Your Honor, I want to say I feel just as much pain as anybody else who is listening to —

THE COURT: Can I tell you something?

MR. HEIDENBERGER: Yes, Your Honor.

THE COURT: Unless some Supreme Court tells me I'm wrong, you're in this case. I've never seen anything so outrageous in my life. The Government of Germany can't give this man a pension? And I think this Court has been misled. I think you've misled this Court. And if that is still going to be the position taken by the German Government, that's outrageous. He's one of two survivors. He had no right to get a pension, and you now told this Court he had a right and he slept on his rights.

MR. HEIDENBERGER: Your Honor, may I respond?

THE COURT: This man didn't sleep on any rights.

MR. HEIDENBERGER: May I respond, Your Honor?

THE COURT: You certainly may.

MR. HEIDENBERGER: I have handled many American claimants for restitution who have received restitution. There are two cases who failed to file in time.

THE COURT: He didn't fail to do anything. He didn't fail to do anything. And if this government can't — if your government can't take care of a situation like this where a family was destroyed, where you took an American citizen and you put him in a place not fit for animals, it's outrageous. Outrageous

to come into this Court with this business don't have jurisdiction. We got jurisdiction. He's an American citizen and he's going to sue in this Court. And if you don't like it, fine. You go to another Court. But this Court is going to hold this in. And whatever his damages are, he's going to get it. And I think it's up to your government to do something in this case. He was an American citizen, and I'm not saying it was all right to do it to anybody else, but to do this to an American citizen because he happens to be a Jew is outrageous.

MR. HEIDENBERGER: It's not my government, Your Honor.

THE COURT: Well, whose government is it?

MR. HEIDENBERGER: I'm an American citizen, Your Honor.

THE COURT: Well, the government you represent.

MR. HEIDENBERGER: And I'm doing a job to find out what the law here is and for Your Honor, frankly, I would like to have a record of this, and the question is —

THE COURT: You can have a record, and I want this record. If you want it, get it on the front page of the Washington Post or anywhere else you want to print it. But these people who have lived through this and seen their parents killed, their brothers killed, it's outrageous, and nobody wants to do anything for these people. It's ridiculous.

MR. HEIDENBERGER: The Germans spent billions, billions of dollars to compensate.

THE COURT: Billions of dollars, but they wouldn't give this man $500 a month, a pittance. What they did, they robbed him. Where did you ever think of taking an American citizen and throwing them in a concentration camp?

MR. HEIDENBERGER: I don't know anything about the facts, Your Honor.

THE COURT: Well, you should learn it. Learn about the facts. I learned it.

MR. HEIDENBERGER: The plaintiff himself —

THE COURT: Unless that man has misrepresented to me, learn the facts. This is history that is beyond belief. And what pains more than anything else to think they took an American citizen, an American citizen. What animals do we have here?

MR. HEIDENBERGER: I have no problem — I fully agree, Your Honor.

THE COURT: And yet this government will not make any amends, will not take — he's one of two people in the whole country, and if this man cannot bring a case in this country. When he went over there, he went over there on the basis that

case, Judge Easterbrook in the Apostol case addressed this issue specifically in the context of an appeal from a denial of a motion for immunity, and he said, obviously it makes no sense that a case go to trial while the Court of Appeals is deciding whether a case should go to trial, and that's what this is about.

THE COURT: Well, can't you get a stay from them? Isn't that the way to proceed? Isn't that the orderly way to proceed is get a stay?

MR. CORCORAN: Our understanding is the orderly way to proceed was that there was an automatic stay, and that's what Judge Easterbrook says. There is an automatic stay. I don't know any of these cases that have gone forward.

THE COURT: Well, until you get a stay, we're going forward. All right?

MR. CORCORAN: All right. Then let me make another argument which is not addressed in our opposition, and that is I don't know what — I mean, Your Honor is taking the view the FSIA doesn't apply to this case.

THE COURT: Doesn't apply to the extent that it's being used to deny these people the right to proceed here in this Court, that you can't have a government that has denied an individual his basic rights to then use — go into that government's Courts and say use the law against that individual. That to me is so basic that I don't know what else I can tell you. I've said it 52 times. It seems to me that this gentleman has the right as an American citizen to come into this Court to be able to sue a government that has treated him as poorly as this man has been treated and his family has been treated. Now, what is so different? This is a sui generis case.

MR. CORCORAN: I don't think so, Your Honor. I think this is a case —

THE COURT: You don't think this is sui generis?

MR. CORCORAN: No.

THE COURT: All right.

MR. CORCORAN: These similar facts have been addressed by the Supreme Court specifically, and I'd like to read you some language from the latest Supreme Court opinion. I have to get it.

THE COURT: I don't need to be lectured. I understand. I read the latest subpoena, but the point that you're raising is something that is beyond my understanding. You don't think that this case is different than that case? You don't see the distinction?

MR. CORCORAN: Between the —

THE COURT: Between the government that has killed six million Jews and —

MR. CORCORAN: It's not the same government, Your Honor. We're 50 years down the pike. You can't treat the Federal Republic of Germany like it was Nazi Germany. It isn't Nazi Germany.

THE COURT: Well, the point is that there are certain — nobody is trying to treat the Federal Government of Germany as Nazi Germany, except by the actions that are being taken by your government. And the actions that have been taken by your government have got to be dealt with in the way that they are taken.

MR. CORCORAN: They have to be dealt with —

THE COURT: We're told here that this case is jurisdictional.

MR. CORCORAN: It is.

THE COURT: That's not the issue of this case.

MR. CORCORAN: This is an Article III Court. It must always examine its subject matter jurisdiction. The Supreme Court says that again and again and again.

THE COURT: If you think that this case is about jurisdiction, then you don't understand this case. This case has nothing to do with jurisdiction.

MR. CORCORAN: A Court has to have jurisdiction. I'm not saying that there shouldn't be a remedy for Mr. Princz, simply that it is not in this Court.

THE COURT: When you say the issue in this case is jurisdiction, I ask you several questions. Every time that Mr. Princz has tried to get the German Government to listen to